

REMARKS

Claims 1-46 and 61 are at issue, claims 47-60 and 62-64 having been withdrawn from consideration by the Examiner.

The provisional rejection of claims 1-46 and 61 under the judicially created doctrine of double patenting over claims 57-87 of the copending application Serial No. 10/454,003 is respectfully traversed. A provisional double patenting rejection is proper only when the same invention is being claimed twice. See MPEP §804. However, claims 1-46 and 61 of the present application are not claiming the same invention as claims 57-87 of the copending application. Specifically, claims 57-87 of the copending application do not recite an acoustic wave cavity formed in a noncylindrical substrate or at least one transducer positioned with respect to the acoustic wave cavity to generate a torsional acoustic wave in the acoustic wave cavity as recited in claims 1-16, 43-46 and 61 of the present application. Nor do claims 57-87 of the copending application recite an acoustic wave cavity formed in a noncylindrical substrate and at least one transducer being positioned off-center with respect to a centerline of the acoustic wave cavity as recited in claims 17-37 of the present application. Nor do claims 57-87 of the copending application claim an acoustic wave cavity formed in a noncylindrical substrate and at least one transducer generating an acoustic wave in the acoustic wave cavity that is insensitive to water of varying levels on the acoustic wave cavity as recited in claims 38-42. Moreover, the specification of the copending application Serial No. 10/454,003 does not disclose the subject matter claimed in the present application as is apparent from a comparison of the drawings. Specifically, the drawings of Figs. 1-7 and associated description of the present invention are not disclosed in the copending application as the examiner contends. As such claims 1-46 and 61 could not be filed in the copending application. Because the copending application does not claim and could not claim the invention set forth in Claims 1-46 and

61, the double patenting rejection is believed to be improper and withdraw of this rejection is respectfully requested.


As to the rejection of claims 43-46 as anticipated by Johnson et al. 5,813,280, claim 43 has been amended to make it clear that the substrate is a noncylindrical substrate. As such claims 43-46 are believed to be allowable over Johnson et al. for the same reason that claims 1-42 and 61 were indicated to be allowable.

Claims 1-46 and 61 are believed allowable for the reasons discussed above. Reconsideration and allowance of claims 1-46 and 61 is respectfully requested.

The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Dated: December 16, 2005

Respectfully submitted,



Jean Dudek Kuelper
Reg. No. 30,171

McAndrews, Held & Malloy, Ltd.
500 West Madison Street
34th Floor
Chicago, IL 60661
Telephone: (312) 775-8000
Facsimile: (312) 775-8100